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EXAMINER

KEEHN, RICHARD G

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/786,103	Applicant(s) SAKURAI, YOUICHI	
	Examiner Richard G. Keehn	Art Unit 2456	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,8,10,11,14,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8,10,11,14,17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1, 3-5, 8, 10, 11, 14, 17 and 18 have been examined and are pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/10/2008 has been entered.

Response to Arguments

2. Applicant's arguments with respect to the rejection of Claims 1, 3-5, 8, 10-11, 14 and 17-18 under 35 U.S.C. 103(a) have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

3. Claims 1, 8, 10 and 11 are objected to because of the following informalities: The amended claim language includes the phrase "so that" which renders the limitation following it a statement of the invention's *purpose*, rather than claiming the invention itself. Examiner recommends replacing "so that" with ", and" to overcome the objection. Examiner will continue prosecution giving the limitations patentable weight in order to

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advance prosecution, with the assumption that Applicant will correct this minor informality. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 3-5, 8, 10, 11, 14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,611,923 B1 (Mutalik et al.), and further in view of US 6,785,786 B1 (Gold et al.) and US 6,398,105 B2 (Ramberg et al.).

As to Claims 1, 8, 10 and 11, Mutalik et al. discloses an invention substantially as claimed, including a data backup device connected to a server via a network, a data backup method, a computer readable recording medium that stores a computer program including computer executable instructions which when executed by a computer, cause the computer to perform, and a data backup system comprising a client and a server connected to each other via a network respectively, comprising:

a storage unit that stores data (Mutalik et al. – Figure 1, elements 13, 14, 12 are all storage units);

a backup controller that [sic]

transmits the data to the server through the network to store the data as backup data in the server [sic] (Mutalik et al. – Column 2, line 48 to Column 3, line 10 recite the backup operation including transmitting data through the network to the server to store

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data as backup data and the specification of data being transmitted, the backup server being the backup controller and the mass storage subsystem being the server);

[sic] for each of the data stored in the storage unit, wherein the backup controller specifies [sic] each of the data identified when transmitting each of the data to the server so that each of the data transmitted to the server is stored in the server [sic] (Mutalik et al. – Column 2, line 48 to Column 3, line 10 recite the backup operation including transmitting data through the network to the server to store data as backup data and the specification of data being transmitted, the backup server being the backup device and the mass storage subsystem being the server); and

a data restoring unit that

receives a request from a user (Mutalik et al. – Column 3, lines 4-19 recite the restore request from a user, the determination of data to be restored, and restoration of the determined data),

determines [sic] backup data to be obtained from the backup data stored in the server [sic], based on the request, [sic], requests the server to transmit the backup data [sic], receives the backup data [sic] from the server, and restores to the storage unit the backup data [sic] (Mutalik et al. – Column 3, lines 4-19 recite the restore request from a user, the determination of data to be restored, and restoration of the determined data).

Mutalik et al. do not disclose, but Gold et al. disclose an invention substantially as claimed, including

a usable band detector that detects a width of a usable band from an available band of the network, the usable band currently not being used (Gold et al. – Column 5,

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lines 6-15 recite the detection of bandwidth to determine if a sufficient amount of usable bandwidth is available); and

determines whether the width of the usable band is wider than a predetermined width (Gold et al. – Column 5, lines 6-15 recite the detection of bandwidth by the backup apparatus to determine if a sufficient amount of usable bandwidth is available); and

when the usable band is determined to be wider than the predetermined width (Gold et al. – Column 5, lines 6-15 recite the backup will be allowed to start if bandwidth is sufficient).

Mutalik et al. do not disclose, but Ramberg et al. disclose an invention substantially as claimed, including

a data identifying unit that identifies a type of data selected from a plurality of types (Ramberg et al. – Column 12, lines 2-3 and lines 36-39 recite the data type identifying unit);

according to the type (Ramberg et al. – Column 11, lines 29-51 recite backup and restoration according to data type);

a type of (Ramberg et al. – Column 11, lines 29-51 recite backup and restoration according to data type);

the type of backup data being one of the types (Ramberg et al. – Column 11, lines 29-51 recite backup and restoration according to data type);

of the type determined (Ramberg et al. – Column 12, lines 2-3 and lines 36-39 recite the data type identifying unit);

of the type transmitted (Ramberg et al. – Column 11, lines 29-51 recite backup and restoration according to data type; Column 12, line 20 recites the transmission); and

of the type received (Ramberg et al. – Column 11, lines 29-51 recite backup and restoration according to data type).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine a usable band detector that detects a width of a usable band from an available band of the network, the usable band currently not being used; determines whether the width of the usable band is wider than a predetermined width, and when the usable band is determined to be wider than the predetermined width taught by Gold et al., with the data restoration system taught by Mutalik et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to allow the client to powersave or disconnect and continue backup when resources are available (Gold et al. – Column 5, lines 18-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine data type characterization, determination, storage by type and transmission/receipt systems and methods by type taught by Ramberg et al., with the storage backup and restoration units taught by Mutalik et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to match client criteria and determine if additional processing is needed based on data type before sending to the next party (Ramberg et al. – Column 2, lines 42-67).

As to Claims 3 and 14, the combination of Mutalik et al., Gold et al. and Ramberg et al. discloses an invention substantially as claimed, including the data backup device and data backup system according to claims 1 and 11 respectively,

wherein the types are user data, operating system setting data, application information, and other data (Ramberg et al. - Abstract recites user, voice recognition system data and barcode application data; Gold et al. - Column 6, lines 35-40 recite the backup of operating system data).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claim 4, the combination of Mutalik et al., Gold et al. and Ramberg et al. discloses an invention substantially as claimed, including the data backup device according to claim 1, further comprising

a data restoring unit that

receives an initial state restore request from a user to restore data of an initial state of the data backup device (Gold et al. – Column 8, lines 54-57 recites a user request to restore an earlier version of a file),

requests the server to transmit a difference between the backup data and an initial state master data both stored in the server (Gold et al. – Column 8, lines 59-64 recite that the difference is requested, identified and sent to the client storage; line 21 recites that the different versions reside on the backup apparatus), and

receives the difference from the server to restore the difference to the storage unit (Gold et al. – Column 8, lines 59-64 recite that the difference is requested, identified and sent to the client storage).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine a data restoring unit that receives an initial state restore request from a user to restore data of an initial state of the data backup, requests the server to transmit a difference between the backup data and an initial state master data both stored in the server, and receives the difference from the server to restore the difference to the storage unit taught by Gold et al., with data restoring taught by the combination of Mutalik et al., Gold et al. and Ramberg et al.

One of ordinary skill in the art at the time the invention was made would have been motivated to allow a user to restore a selected version of the backup other than the latest (Gold et al. – Column 8, lines 54-58).

As to Claim 5, the combination of Mutalik et al., Gold et al. and Ramberg et al. discloses an invention substantially as claimed, including the data backup device according to claim 1, further comprising:

a distribution specifying unit that receives distribution information from a user and transmits the distribution information to the server (Ramberg et al. – Claim 28 recites the ADC device; Abstract recites user input),

wherein the distribution information specifies distributed data to be distributed from the backup data stored in the server to another client separate from the data

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backup device via the network (Ramberg et al. – Claim 28 recites the router which sends backed up data to another ADC device; Column 11, lines 47-52 recite the data being backed up on the server until distribution is feasible),

a time at which the distributed data is to be distributed (Ramberg et al. – Claim 28 recites only when client applications should receive the data), and

a destination to which the distributed data is to be distributed (Ramberg et al. – Claim 28 recites the router which sends backed up data to another ADC device).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claim 17, the combination of Mutalik et al., Gold et al. and Ramberg et al. discloses an invention substantially as claimed, including the data backup system according to claim 11, wherein

the server comprises an initial state storage unit that stores initial state master data of the client (Gold et al. – Column 8, lines 54-63 recites a user request to restore an earlier version of a file. This is achieved through the use of the DTF and BDF, which allows a user to capture a state in time. Since that state is retrievable, and a “master” is user defined, a “master” or previous copy must exist in order to restore back to that version. Hence, the initial state master data of the client is stored), and

the data restoring unit that in the client receives an initial state restore request from a user to restore data of an initial state of the client (Gold et al. – Column 8, lines 54-57 recites a user request to restore an earlier version of a file),

requests the server to transmit a difference between the backup data and the initial state master data (Gold et al. – Column 8, lines 54-57 recites the DTF being used to identify the differences between backup versions), and

receives the difference from the server to restore the difference to the client (Gold et al. – Column 8, lines 59-64 recites the difference being determined and said difference is sent to the client).

The motivation and obviousness arguments are the same as in Claim 1.

As to Claim 18, the combination of Mutalik et al., Gold et al. and Ramberg et al. discloses an invention substantially as claimed, including the data backup system according to claim 11, wherein

the client further comprises a distribution specifying unit that receives distribution information from a user and transmits the distribution information to the server, the distribution information that specifies distributed data to be distributed from the backup data stored in the server to another client separate from the client via the network, a time at which the distributed data is to be distributed, and a destination to which the distributed data is to be distributed (Ramberg et al. – Claim 28 recites the ADC device; Abstract recites user input; Column 4, lines 60-67 recite the user input from several devices that send data as well as distribution information such as bar code readers, RF readers, magnetic strip readers, speech recognizing devices et al.; Claim 28 recites the router which sends backed up data to another ADC device; Claim 28 recites only when

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client applications should receive the data; Claim 28 recites the router; Column 11, lines 47-52 recite the time for which to send the data from the server to the client), and

the server further comprises a data distributing unit that distributes the distributed data from the backup data to the destination and at the time based on the distribution information (Ramberg et al. – Claim 28 recites the ADC device; Abstract recites user input; Claim 28 recites the router which sends backed up data to another ADC device; Claim 28 recites only when client applications should receive the data; Claim 28 recites the router which sends backed up data to another ADC device).

The motivation and obviousness arguments are the same as in Claim 1.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. These include:

US 6,415,280 B1	Identifying and requesting data in network using identifiers which are based on contents of data
US 2003/0126233 A1	Content service aggregation system
US 2003/0236861 A1	Network content delivery system with peer to peer processing components
US 2002/0026501 A1	Decreased idle time and constant bandwidth data-on-demand broadcast delivery matrices
US 2003/0188318 A1	IP-based video-on-demand system with anti-piracy

	capabilities
US 2003/0115295 A1	High performance client/server editor
US 2004/0153567 A1	Scheduling data transfers using virtual nodes
US 2004/0001511 A1	Catprobe
US 6,948,039 B2	Data backup and restoration using dynamic virtual storage
US 6,714,952 B2	Method for backup and restore of a multi-lingual network file server
US 6,434,560 B1	Method for accelerated sorting based on data format
US 2003/0135650 A1	Backup system

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard G. Keehn whose telephone number is 571-270-5007. The examiner can normally be reached on Monday through Thursday, 9:00am - 8:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RGK

/Bunjob Jaroenchonwanit/
Supervisory Patent Examiner, Art Unit 2456